APPENDIX A

Interstate Commerce Act. Title 49, United States Code:

Section 13a(1).

A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four

months beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.

Judicial Code, Title 28, United States Code:

Section 1336(a).

Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 68 C 956

CITY OF CHICAGO, THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY TENNESSEE, VILLAGE OF MILFORD, CITY OF WATSEKA, CITY OF HOOPESTON, CITY OF DANVILLE, CITY OF TERRE HAUTE, CITY OF VINCENNES and MAURICE F. RADRIZZI, *Plaintiffs*,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY, *Defendants*.

Memorandum and Order

Before Knoch, Senior Circuit Judge, and Robson and Perry, District Judges.

Robson, District Judge:

This is a suit to review certain findings and conclusions of the Interstate Commerce Commission. The defendant railroad has moved to dismiss. This court is of the opinion that the motion should be granted.

On August 31, 1967, the Chicago & Eastern Illinois Railroad Company ("Eastern") gave notice under 49 U.S.C. § 13a(1) that, effective October 1, 1967, its trains numbered 93 and 54 between Chicago, Illinois, and Evansville, Indiana, would be discontinued. On September 18, 1967, the Interstate Commerce Commission ("Commission") entered an order requiring Eastern to continue operating trains 93 and 54 pending an investigation by the Commission. After hearings and briefs, Division 3 of the Commission on January 25, 1968 (served January 31, 1968),

decided to terminate its investigation, and filed a report outlining its reasons. A petition for reconsideration was denied on May 8, 1968. This suit was filed shortly thereafter. A three-judge court was convened and a joint hearing (with *Tennessee Public Service Comm.* v. *United States*, 68 C 1666) was held on November 4, 1968.

The statute under which Eastern posted its notices to discontinuance is a unique statute passed in 1958 to deal with serious financial problems faced by this nation's railroads. It allows the railroads to discontinue certain interstate trains without seeking prior approval of the Interstate Commerce Commission or any state commissions. If the Commission does nothing to stop the railroad, the discontinuance follows automatically by statute, with no need whatsoever for a Commission order to authorize the discontinuance. 49 U.S.C. § 13a(1). The Commission has a short period (30 days) in which to decide whether an investigation is necessary, and, after an investigation (if, of course, the Commission determines it is necessary), the Commission may order the continuance of part or all of the trains involved. This period of continuance is restricted to only one year, after which time the railroad may post further notices and go through the entire process again.

It has been conceded by both sides that when the Commission decides not to enter into an investigation, there is no judicial review, even though there may be cities and states which might be "aggrieved" by the discontinuances. *State of New Jersey* v. *United States*, 168 F.Supp. 324 (D. N.J. 1958), *affirmed per curiam* 359 U.S. 27 (1959); *Sludden* v. *United States*, 211 F. Supp. 150 (M.D.Pa. 1962). In the *New Jersey* case, *supra*, at 329, the court said that the Commission's order foreclosing an investigation was

> "nothing other than an announcement that the Commission intended to take no action with respect to the railroad's notice of intention to discontinue the ferries. Section 13a(1) clearly leaves to the absolute discretion of the Commission the determination of whether or not

> it . . . shall make any investigation of the matter or avail itself of its temporary veto power by way of suspension within the limitations of the Act."

The instant case, contend the plaintiffs, has a crucially different element: The Commission here entered into an investigation, held hearings, made findings, and issued an order terminating the investigation. Even though the plaintiffs concede, as they must, that the statute [§ 13a(1)] was the source for the authority to discontinue, and not any order or action of the Commission, they argue that judicial review exists as to the order terminating the investigation under 28 U.S.C. § 1336, which provides for review of Commission "orders". The question whether such a Commission order does fall under § 1336 has been discussed at length in several prior decisions.

In *State of Minnesota* v. *United States,* 238 F.Supp. 107, 112 (D.Minn. 1965), the Court determined that the report and findings filed after the investigation was terminated were both "gratuitous" acts. The reasoning behind the Commission's decision to terminate, the court continued, even though it showed that the Commission "decided" that the discontinuances were proper, is part of the power to terminate and within the "sole discretion" of the Commission, and not subject to judicial review. The court reasoned that the primary purpose of an investigation and the hearings was to give the Commission enough information so that it would be able to reach a sound judgment as to whether it should interfere with the proposed cutbacks in rail service. Two situations were posed: (1) Where the Commission knows enough about the situation, as in the *New Jersey* case, *supra,* at 328, it will hold no investigation, and the discontinuance will occur automatically; and (2) Where the Commission does not know enough about the problem, it will investigate, hold hearings, determine (as in this case) that the discontinuance does not warrant its interference, terminate the investigation, and the discontinuance will *still* occur automatically. There is, said the

court, no logical difference between the two situations. Where the Commission decided to take action, the order requiring continuance for one year would be reviewable; however, the "mere decision of the Commission to take no action is not". *Minnesota, supra,* at 112. To provide review of decisions to terminate investigations, concluded the court, would not only be contrary to the clear meaning of § 13a(1), but would be poor policy, "since it might even encourage the Commission not to investigate doubtful cases." *Id.,* at 113.

The court in *State of New Hampshire* v. *Boston and Maine Corp.,* 251 F.Supp. 421 (D.N.H. 1965), recognized that there might be some unfairness here. However, it said that Congress, in meeting what was almost a crisis situation, could provide review for one side (the railroads), especially where the other side would be seeking review of Commission "non-action", if there were cogent policy considerations to call for such a result. *Id.,* at 425. It is entirely within the spirit of the legislation to have given the railroads rapid relief without lengthy review. In fact, it was the delay inherent in the proceedings before the state commissions that called forth the passage of Section 13a(1). See the discussion of the legislative history in, e.g., *State of Vermont* v. *Boston and Maine Corp.,* 269 F.Supp. 80, 84 (D. Vt. 1967).

These considerations sufficiently meet, in this court's opinion, the contention by two later courts that Congress did not intend to deny judicial review in the present circumstances. *Vermont, supra; City of Williamsport* v. *United States,* 273 F.Supp. 899, 902-903 (M.D.Pa. 1967).*

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* The same underlying facts were the substance of the case of *City of Williamsport* v. *United States,* 282 F. Supp. 46 (M.D. Pa. 1968), affirmed *per curiam* 392 U.S. 642 (1968). This case decided that the Commission has the power to order a partial continuance of operations, but did not discuss the jurisdictional question at all. There was also no discussion of the jurisdictional issue in *People of the State of California* v. *United States,* 258 F. Supp. 950 (N.D. Cal. 1966).

Further supporting this conclusion is the fact that in Section 13a(2), which deals with wholly intrastate operations, Commission approval is expressly necessary before a railroad can discontinue any service. 49 U.S.C. § 13a(2). The provisions, therefore, in 28 U.S.C. § 1336, that only Commission "orders" are reviewable, call for judicial review in cases falling under Section 13a(2). But where, as in Section 13a(1), the statute is self-implementing, no comparable "order" of the Commission is involved. Taking the statute in its entirety, it seems apparent that Congress intended to deny judicial review in the instant case.**

** The Commission takes the position that review is proper under the present statute but has requested an amendment to the Act to remove any doubt. *Vermont, supra,* at 83-84, n. 2.

This court, in view of its opinion on the jurisdictional issues, does not pass on the other questions presented.

It is therefore ordered that the defendant Chicago & Eastern Illinois' motion to dismiss be, and it is hereby granted and the cause is hereby dismissed.

WIN G. KNOCH
Circuit Judge

J. SAM PERRY
District Judge

EDWIN A. ROBSON
District Judge

January 8, 1969.

APPENDIX C

F-9449

Served January 31, 1968

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 24725

CHICAGO & EASTERN ILLINOIS RAILROAD CO.—Discontinuance of Trains Nos. 93 and 54 Between Chicago, Ill., and Evansville, Ind.

Decided January 25, 1968.

Upon investigation, found that operation by the Chicago & Eastern Illinois Railroad Company of passenger trains Nos. 93 and 54 between Chicago, Ill., and Evansville, Ind., is not required by public convenience and necessity, and that the continued operation thereof will unduly burden interstate commerce. Investigation discontinued.

James H. Durkin and *Edwin Richardson* for rail carrier.

J. Fred Parker for Georgia Public Service Commission, protestant.

William H. Wilson for Public Service Commission of Indiana, protestant.

Mary Louise Wolford for the public of the State of Indiana, protestant.

Edward G. Finnegan, Leon J. Heidgen and *James A. Parker* for Illinois Commerce Commission, protestant.

Harold Cowen and *Bernard Rane* for city of Chicago, Ill., protestant.

Robert S. Matthews and *Ronald Warrum* for city of Evansville, Ind., protestant.

Keith E. Roberts for village of Milford, Ill., and city of Watseka, protestants.

William E. Nelson for city of Hoopeston, Ill., protestant.

Marion E. Wright for city of Danville, Ill., protestant.

Robert F. Doolittle, Jr. for city of Vincennes, Ind., protestant.

Frederick T. Bauer for city of Terre Haute, Ind., protestant.

Raymond J. Kearns for Sisters of Providence, St. Mary of the Woods, Ind., protestant.

William P. Byroad, Gordon E. Cox, B. L. Dresbach, Thomas J. Duggan, George B. Lee, J. Thomas McNeal, William E. Nelson, Earl G. Quinn, Keith E. Roberts, J. H. Smith, and George P. Sheahan for various railway labor organizations.

Report of the Commission

Division 3, Commissioners Tuggle, Bush, and Stafford

TUGGLE, *Commissioner:*

Pursuant to the provisions of section 13a(1) of the Interstate Commerce Act as amended, the Chicago & Eastern Illinois Railroad Company (C&EI), a common carrier by railroad subject to the provisions of part I of the act, on August 31, 1967, filed notices and supporting statements in which it proposed to discontinue, effective October 1, 1967, service by its interstate passenger trains Nos. 93 and 54 between Chicago, Ill., and Evansville, Ind., a distance of 287 miles. Copies of the notices were duly served and posted in the manner required by section 13a(1) and our rules and regulations thereunder.

By petition filed concurrently in Finance Docket No. 24726, C&EI seeks authority under section 13a(2) to discontinue service by its intrastate passenger trains Nos. 3 and 4 between Chicago and Danville, Ill. That proceeding is the subject of a report and recommended order[1] of the

[1] By petition filed December 14, 1967, C&EI sought omission of the examiner's report and recommended order in Finance Docket No. 24726 and consolidation of that matter with this proceeding. Replies thereto were filed by certain protestants, and by order entered January 8, 1968 the petition was denied.

hearing examiner served separately. C&EI's application filed with the Illinois Commerce Commission for authority to discontinue trains Nos. 3 and 4 was denied by that body on September 20, 1967. Appropriate notice of the petition filed here in Finance Docket No. 24726 was served on the Governor of the State of Illinois.

Protests to C&EI's proposal in the titled proceeding were filed by communities along the line and State, civic, business, and railway labor interests, as well as users of the trains. By order of September 18, 1967, we instituted an investigation and required continued operation of trains Nos. 93 and 54 pending a hearing and decision (up to the statutory maximum of 4 months). Because of the statutory limitation on the time available for investigation and decision, our order provided for omission in the titled proceeding of a report and recommended order by the examiner as part of the decisional process and for certification of the record to us for initial decision.

Public hearings were held in Chicago, Momence, Watseka, Hoopeston and Danville, Ill., and Evansville, Vincennes, and Terre Haute, Ind., on a consolidated record with the section 13a(2) proceeding in Finance Docket No. 24726. Briefs were filed by C&EI, the Illinois Commerce Commission, and jointly by the village of Milford, the cities of Watseka, Danville and Hoopeston, Ill., and the Brotherhood of Railroad Trainmen.

At the hearing protestants moved for dismissal of the proceedings on several grounds, principally that since Missouri Pacific Railroad Company (MoPac) controls C&EI, use of financial data relating only to C&EI and excluding MoPac is grossly misleading and contrary to the provisions of the act. Other relief sought included suspension or termination of the proceedings and oral argument on the motion. C&EI replied in opposition, and the motion was taken under advisement. The protestants pursue the argument on brief.

The motion is denied. Oral argument is not warranted. By contending MoPac is a necessary party to these proceedings, protestants ignore the plain language of section 13a of the act, which confers upon this Commission jurisdiction over proposed passenger train discontinuances by "a carrier or carriers subject to this chapter." Clearly, C&EI falls within the term "a carrier" subject to part I of the act. Whether or not the statutory standards for ordering a continuance of service are met is a matter which, in this case, does not depend (as will later be made clear) upon the corporate relationship of MoPac and C&EI. Piercing the corporate veil may be warranted in some situations, as for example, where false and misleading representations are made or where some unlawfulness may be involved, and perhaps in other circumstances, but here no such question is raised and no substantial reason is advanced to pursue that course. The record indicates that C&EI is the proper party in interest and that it has fully cooperated in presenting the data required for our action.

Trains Nos. 93 and 54 operate on the following schedules:

Train No. 93 daily	Miles	Stations	Train No. 54 daily
P.M.			A.M.
3:45	0.0	Lv. Chicago, Ill. .....Ar.	10:35
3:59	6.6	Chicago (63rd St.)	10:21
A4:30	28.8	Steger	E 9:44
....	77.5	Watseka	G 8:49
6:10	123.2	Danville	7:55
7:15	177.5	Terre Haute, Ind.	6:40
B7:45	203.7	Sullivan	G 6:11
8:18	234.7	Vincennes	5:40
D8:50	259.0	Princeton	5:05
9:55	287.2	Ar. Evansville .....Lv.	4:30

A—Stops to receive passengers.
B—Stops to discharge revenue passengers from Chicago and Steger.
D—Stops to discharge or receive revenue passengers.
E—Stops to discharge passengers.
G—Stops to receive revenue passengers for Chicago.

Their operation is in conjunction with trains of the Louisville & Nashville Railroad (L&N) similarly designated, which operate between Evansville and Atlanta, Ga., and Montgomery, Ala. The interchange is at Evansville. The L&N splits its southbound No. 93 at Nashville, Tenn., with one section terminating at Atlanta and the other at Montgomery. L&N originates one section of its northbound train No. 54 at Atlanta and the other at Montgomery, and consolidates the two at Nashville.

The trains, designated "The Georgia—Hummingbird," carry passengers and baggage. They are powered with three diesel locomotives, and have a consist of 10 regularly assigned cars daily with 11 cars on Friday, Saturday and Sunday. Train No. 93 leaves Chicago with a baggage-mail car, a dormitory, diner, lounge, sleeper and two coaches destined to Atlanta daily; a coach destined to Evansville on Friday, Saturday and Sunday; two coaches destined to Montgomery daily; and a sleeper destined to Mobile daily. Train No. 54 has a baggage-mail car, a dormitory, diner, lounge, sleeper and two coaches orignating at Atlanta daily; a coach originating at Evansville on Friday, Saturday and Sunday; two coaches originating at Montgomery daily; and a sleeper originating at Mobile daily; all cars having destination to Chicago. The passenger-carrying equipment is air-conditioned.

Due to a restructuring of mail service by the U. S. Post Office Department, the mail cars were discontinued as of June 10, 1967, except for one storage-mail car from Chicago to Birmingham, Ala., and in October 1967, the Post Office Department removed that car. The mail handled in the baggage-mail car is minimal. Train No. 93 still carries express traffic for the account of Railway Express Agency, Inc., destined to Chattanooga. These trains do not handle the express to or from C&EI points south of Chicago.

Alternate passenger transportation service to and from the communities served by C&EI between Chicago and

Evansville, and south thereof served by L&N is available by bus and by air at most points. There are four flights daily southbound and three northbound between Chicago and Danville; two flights daily southbound and three northbound between Chicago and Terre Haute; and four flights daily southbound and five northbound between Chicago and Evansville. Numerous flights are scheduled between Chicago, on the one hand, and, on the other, Atlanta, Chattanooga, Birmingham, Nashville, Montgomery, and Mobile, and between Evansville and Atlanta. Watseka and Hoopeston, Ill., Sullivan, Vincennes and Princeton, Ind., have no air service.

A major bus line operates three southbound and four northbound buses daily between Chicago and Evansville, with stops at all intermediate points served by the subject trains. Rail transportation is available, though limited, (a) by C&EI trains Nos. 3 and 4 between Chicago and Danville (but those are the trains involved in Finance Docket No. 24726, the discontinuance proceeding referred to above) and (b) by Illinois Central Railroad (IC) between Chicago and Carbondale, Ill., and points south thereof (four trains daily in each direction). Highway distances between communities served by C&EI and those served by IC in Illinois vary from 12 to 35 miles. Bus fares are lower than rail fares between Chicago and all points served by the subject trains, except Sullivan, Ind. Air fares are higher than rail or bus.

C&EI maintains that it has lost patronage to the private passenger automobile (as a mode of intercity transportation), and, as evidence thereof, introduced statistics showing the increase in the number of registered automobiles in the counties of Illinois and Indiana traversed by the subject trains. Considering the five Illinois counties (Cook, Will, Kankakee, Iroquois, and Vermillion) and the six Indiana counties (Park, Vigo, Sullivan, Knox, Gibson, and

Vanderburg) it was shown that in 1960 the Illinois counties had 1,653,520 registrations while the Indiana counties had 132,253, and that by 1966, there was an increase of about 20 percent—to 1,994,751 in the Illinois counties and 158,186 the Indiana counties.

For the benefit of automobile users, Illinois Highway 1 between Chicago and Danville and U. S. Highway 41 between Danville and Evansville are adjacent to and parallel the line of C&EI. Also U. S. Highway 41 continues northward in Indiana east of Illinois Highway 1 to Chicago. Both are first class highways and U. S. Highway 41 has substantial segments with four lanes. A number of witnesses testified to the effect that driving on the highways is dangerous. South of Chicago and its suburbs the roads traverse sparsely populated areas, are generally straight and the terrain is flat.

The population[2] at the points served by the subject trains was shown as follows: Chicago 3,550,404, Chicago Heights 41,000, Watseka 5,219, Hoopeston 6,606, Danville 41,856, Terre Haute 72,500, Sullivan 4,979, Vincennes 18,046, Princeton 7,906, and Evansville 141,543.

A number of those points have commercial or service areas extending beyond their corporate limits and the population reflected by such areas is larger than for the point involved.

During the periods 1965, 1966 and first 6 months of 1967, train No. 93 carried 84,259, 82,213 and 31,913 passengers, respectively, of which 53,344, 56,230, and 20,952 were delivered to L&N at Evansville. The daily average numbers of revenue passengers transported by that train for the same periods were 230,225, and 176, respectively, of which

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[2] Based on the census taken in 1960. Since that time, some of the areas served have had population increases.

84, 71, and 60, respectively, were local passengers (traveling between C&EI stations). During the same periods, train No. 54 carried 76,854, 75,271, and 28,186 revenue passengers, respectively, of which 57,983, 60,063 and 21,682, were received from L&N at Evansville. The daily average numbers of revenue passengers transported by that train for the same periods were 210, 205, and 153, of which 51, 40, and 33, respectively, were local. The foregoing data were determined from analysis of records of tickets collected by conductors, cash fares received, and tickets honored but not collected, apportioned to the subject trains according to the number of miles traveled thereon.

The supporting studies also show the numbers of passengers boarding and deboarding at each station. Considering the last 6 months of 1967 as representing the present level of patronage, of the 176 passengers on train No. 93, an average of 156 boarded at Chicago, 12 at Steger, 5 at Danville, 2 at Terre Haute and 1 at Vincennes, and 17 left the train at Danville, 20 at Terre Haute, 1 at Sullivan, 7 at Vincennes, 2 at Princeton, 13 at Evansville, and 116 continued on the L&N. Of the 153 passengers on train No. 54 an average of 120 were through passengers from the L&N, 12 boarded at Evansville, 2 at Princeton, 6 at Vincennes, 1 at Sullivan, 11 at Terre Haute, 4 at Danville, and 1 at Watseka, and 3 left the train at Terre Haute, 3 at Danville, 8 at Steger and 139 at Chicago. Thus, the record shows that the C&EI points south of Chicago have had few passengers boarding or leaving the trains.

C&EI's balance sheet statement as of July 31, 1967, shows assets aggregating $119,182,901, including current assets of $10,220,039, special funds $484,841, investments $10,941,671, total properties less depreciation and amortization $96,182,478, and other assets and deferred charges $1,353,872. Liabilities were: current liabilities of $9,631,-117, long-term debt of $53,494,944 (including $3,103,470

due within 1 year), reserves $659,983, other liabilities and deferred credits $619,844, capital stock $29,837,372, capital surplus $112,522, and retained income $24,827,119. Its income statements for 1965, 1966 and first 7 months of 1967, show railway operating revenues of $40,578,936, $41,780,952, and $23,604,275; net railway operating income of $3,486,070, $4,091,786, and a deficit of $1,005,900; and net income after fixed charges and other deductions of $1,736,086, $2,853,372, and a net deficit of $1,757,265, respectively.

C&EI has incurred annual net railway operating deficits in its passenger service in amounts in excess of $1 million for the years 1962 through 1966, inclusive. More than 20 percent of freight net income has been required to subsidize these rail passenger deficits in each of the years 1957 through 1966, except 1959 when the percent of freight net income so required exceeded 12 percent. C&EI estimates that the national award of September 16, 1967 to the shopcraft employees, retroactive to January 1, 1967, will increase its labor costs by $210,000 in 1967 and by $321,000 in 1968. Further, a recent agreement with the Brotherhood of Locomotive Engineers will result in payment of $100,000 to C&EI locomotive engineers in backpay. None of those additional expenses were included in determining the cost of operating the subject trains during the first 6 months of 1967, or in projections made.

C&EI shows data respecting the financial results of the operation of the trains for the years 1965, 1966, and the first 6 months of 1967. In 1965, train No. 93 had revenues (passenger, diner, express and mail) of $1,096,607 and out-of-pocket expenses of $1,001,950 for a net income of $94,657. For the same year, train No. 54 had similar revenues of $811,156, and out-of-pocket expenses of $862,270 for a net out-of-pocket loss of $51,114. In 1966, the corresponding figures for train No. 93 were $1,083,494 revenues, $1,125,287 costs, and $41,793 deficit; for train No. 54 they

were $816,863 revenues, $1,022,127 costs, and $205,264 deficit; the combined net loss for both trains was $247,037. In the first 6 months of 1967, the corresponding figures for train No. 93 were $420,167 revenues, $522,421 costs, and $102,254 deficit, and for train No. 54, $311,281 revenues, $477,387 costs, and $166,106 deficit; the combined net out-of-pocket loss was $268,360. Details of the revenues and expenses for those periods indicated as computed by the carrier are shown in the attached appendix A.

As indicated, actual revenues from these trains, including carbire revenue are reflected in the data presented. The following actual expenses were also employed: Train engineman expense, traincrew expense, sleeping car expense, insurance, expenses incurred in clearing wrecks, baggage loss and damage claims, injuries to persons and dining car and buffet car service. Other expenses and savings data were computed using methods approved by the Commission in prior proceedings. Increases in expenses for 1966 over those of 1965 occurred in four accounts (a) passenger train cars—repairs, (b) equipment depreciation—passenger cars, (c) train supplies and expenses, and (d) joint facility accounts. These were the subject of detailed inquiry. On (a) an accident to train No. 93 at Hoopeston in April 1966, were required extensive repairs to passenger cars ($59,506). Expenses charged to that account in 1965 were abnormally low. On (b) C&EI did not, until 1967, retire its head-end equipment used on other trains in 1965 and 1966, having made such equipment available to the U. S. Post Office Department for use in trains Nos. 93 and 54. Retirements of head-end equipment in 1967, when mail was removed from all C&EI passenger trains amounted to $365,549, but this increase in expense was not reflected in the financial results discussed above. In projecting revenues and expenses involved in operating the subject trains without the mail

revenue equipment, depreciation on only those cars which would be required to operate the subject trains without any head-end business was considered. On (c) the total passenger portion of the account actually decreased in 1966, but spreading the expense over fewer trains than in 1965, resulted in an increased allocation to the remaining trains. On (d) the increase in joint facility expenses in 1966 was due to the discontinuance of passenger trains by other railroads using such facilities, which added proportionally to the expense burden on the remaining trains.

Trains Nos. 93 and 54 use joint facilities at Chicago with four other railroads, and with one other at Terre Haute, Vincennes, and Evansville. During the first 6 months of 1967, no C&EI passenger trains, other than the subject trains used the Terre Haute, Vincennes and Evansville facilities, and as a result, all of the amounts paid for use of those facilities ($25,356, $18,136, and $104,328, respectively) are savable. Joint facility costs were computed in accordance with those methods and standards approved in *Chicago, R. I. & P. Co., Discontinuance of Trains,* 328 I.C.C. 278.

The foregoing data reflect revenues received by C&EI for transportation of mail. Projected annual revenues and out-of-pocket expenses, exclusive of mail traffic, using 1966 revenue data, show that C&EI would incur an annual loss of $242,850 in the operation of train No. 93 and $191,780 in the operation of train No. 54. In projecting equipment depreciation and other expense items only the equipment that actually would be used was considered. The projected annual revenues and out-of-pocket expenses, exclusive of mail traffic, were shown as follows:

	Train No. 93	Train No. 54
Revenues:		
102 Coach[1]	$532,953	$468,549
102 First class[1]	87,680	113,593
103-108 Baggage and other[1]	2,270	1,153
107 Express[2]	587	34,909
131 Dining and buffet[1]	47,844	47,844
Total revenue	671,334	666,048
505-538 Car-hire, net[3]	4,785	4,785
Revenue and income	676,119	670,833
Total expense	918,969	862,563
Profit or loss	(242,850)	(191,730)
Expenses:		
Maintenance of equipment—		
311 Repairs, diesel locomotives[4]	53,406	53,390
317 Passenger train car repairs[5]	141,817	141,817
331 Equipment depreciation—locomotive[6]	8,760	8,760
331 Equipment depreciation—cars[7]	30,103	30,103
335 Employee health and welfare benefits[8]	2,502	2,502
Traffic:		
351-360 Passenger traffic[4]	21,996	16,036
Transportation:		
373 Station employees[4]	15,650	14,568
376 Station supplies and expense[4]	3,062	2,768
378 Yard conductor and brakeman[9]	5,532	5,532
392 Train enginemen[10]	50,193	52,987
394 Train fuel[11]	30,400	30,400
397 Water for train locomotion[11]	1,781	1,781
398 Lubrication for train locomotion[11]	3,709	3,709
399 Other supplies for train locomotion[11]	168	168
400 Enginehouse expense—train[11]	8,108	8,108
401 Trainmen[10]	67,844	67,134
402 Train supplies and expenses[12]	88,308	88,308
403 Operating sleeping cars[4]	49,060	37,392
409 Employee health and welfare benefits[8]	5,163	5,222
Insurance[13]	16,405	16,405
419 Loss and damage—baggage[14]	550	480
420 Injuries to persons[14]	41,044	2,754
441 Dining and buffet service[4]	71,188	71,188

	Train No. 93	Train No. 54
Revenues:		
General:		
452 Clerks, accounting[4]	9,142	8,438
456 Employee health and welfare benefits[4]	360	324
All joint facility accounts[13]	170,720	170,720
532 Railway tax accruals[14]	21,958	21,542
Total expenses	918,969	862,563

[1] 1966 actual. The number preceding each item is the account number in the Commission's Uniform System of Accounts.
[2] Projected based on current traffic.
[3] Projected based on car assignments.
[4] Projected based on first 6 months 1967 expenses.
[5] Projected based on estimated car miles @ first 6 months 1967 cost per car mile.
[6] Based on two unit assignment.
[7] Based on cars required.
[8] Based on current G.M.A. rates applied to labor only.
[9] Based on current assignment.
[10] Based on 1966 payments plus wage increases.
[11] Based on 2 unit assignment @ first month 1967 cost per unit miles.
[12] Based on estimated car mile @ first 6 months 1967 cost per mile plus crews' lodging and meals at current costs.
[13] Based on current premiums.
[14] Based on 2.5 year average.
[15] Based on estimated car assignments.
[16] Based on current rates applied to labor only.

It is thus apparent that C&EI has incurred substantial losses in the operation of the trains Nos. 93 and 54 and that the losses will substantially increase as a result of the Post Office Department's removal of mail from those trains and the consequent discontinuance of passenger trains of other railroads using the Chicago terminal facility, although the latter factor was not considered in making the above projections.

Eight communities on the line served by the subject trains intervened in opposition: Chicago, Watseka, Mil-

ford, Hoopeston, and Danville, Ill., and Terre Haute, Vincennes, and Evansville, Ind. The trains do not serve Milford. Although some Illinois residents who ride C&EI train No. 4 northbound return on train No. 93 southbound, the witnesses testifying at communities in Illinois were primarily interested in th -ontinued operation of trains Nos. 3 and 4. The latter are the subject of the section 13a(2) proceeding in Finance Docket No. 24726 and, under the provisions of that section, are being dealt with in the report of the hearing examiner. Indiana interveners and witnesses testifying at Indiana points were concerned with continued operation of the subject trains.

Of the 144 public witnesses who testified on the consolidated record, 90 directed their testimony in whole or in part to the subject trains. Not all use the services of the trains. Thirty-one testified on behalf of State, county, city government or municipal organizations, civic or trade organizations, and colleges or universities, and one presented the views of a Congressman. A number were concerned with rail passenger service generally, though they themselves did not use the services provided by the subject trains. With few exceptions the public witnesses desire the trains continued in what would be a standby service for use as convenience in bad weather, at holiday periods and for shopping trips. No public witnesses testified at Chicago.

At Watseka, the mayor and representatives of the chamber of commerce and the County Farm Bureau indicated that, although they do not use the subject trains, there is need for rail passenger service in inducing industry to locate in the area. A surgeon testified to using the trains 20-24 times a year to and from Chicago where, he indicates, an increasing number of his patients require medical service. He owns an automobile, but does not use it on long trips.

At Hoopeston, the mayor and the president of the chamber of commerce expressed concern over rail passenger service. Testimony was given by a department store buyer and a beautician. Two personnel managers of large corporations indicated that prospective employees inquire about transportation facilities to and from Chicago. One could express no opinion as to whether discontinuance of the subject trains would have a detrimental effect on recruiting employees in Hoopeston; the other uses other trains of C&EI and was more concerned with their retention. The president of the Hoopeston Industrial Corporation points out that every prospective industry mentions transportation. A representative of a corn festival held annually each September in Hoopeston urges continuation of the service, but of the 100,000 persons attending the last occasion, he knew of only four who came by rail. The foregoing witnesses themselves rarely patronize the subject trains. Another witness rides train No. 93 during unusually heavy snowstorms when other means of travel are not available.

At Danville, municipal, commercial and other organizational spokesmen were concerned with rail passenger service generally and specifically C&EI trains other than those here involved. Several other witnesses proved to be only occasional patrons of trains Nos. 93 and 54—a bookkeeper, a number of railroad employees (who rated their on-time performance as poor), a housewife (who finds them crowded and often late), another housewife whose children sometimes use the trains going to and from colleges (particularly in bad weather), and an architect who expressed the view that the discontinuance would hamper Danville's development. Another witness who uses C&EI trains about once a month, occasionally drives his automobile to Chicago, but would not go by bus because he considers the bus routes circuitous and the service time consuming. Support for continued operation was voiced by a junior chamber of commerce spokesman for 110 mem-

bers who testified that he used the trains only once, but that the majority of the membership use all C&EI trains; and by the chamber of commerce (representing 116 manufacturing firms) as part of its program to promote improvement in transportation. Several manufacturing organizations indicated that some of their employees occasionally use the trains. Spokesmen for three civic organizations use the trains several times a year, particularly during inclement weather, but also have used alternate transportation, including private automobile. A number of the witnesses testified that the northbound train is frequently late and dirty, that this was reported to the railroad and that there was little effective response.

At Evansville, the mayor and a State senator opined that discontinuance of the trains would be detrimental to the growth of industry and commerce in the community. The mayor uses air service on many occasions and uses rail service about once every 6 months. The senator does not have occasion to use C&EI's service. The chamber of commerce spokesman urged that the discontinuance be deferred until L&N acquires the eastern side of C&EI's line, although the transportation division which he represents voted six to three against opposing discontinuance. An aide to a member of Congress from Indiana presented the Congressman's views that rail passenger transportation service is vital to the economic growth of the community, and that all modes of transportation must be kept available. Other witnesses testified to a preference for rail over alternate modes for the occasional trips they take, though some of them found the rail cars crowded, dirty and sometimes unheated. Among them was the representative of a religious community having 30 nuns stationed at Evansville. She indicated that her order's recent transportation requirements were accomplished through use of charter bus service, and that the sisters have sufficient automobiles at their disposal.

At Vincennes, the mayor opposed the discontinuance but, in so doing, was not supported by the city council. The chamber of commerce mailed 475 questionnaires to area residents regarding the proposed discontinuance; 82 were returned showing a 3 to 1 preference for keeping the trains on. A survey at Vincennes University revealed that 22 of the 2,243 students use the trains. Members of the faculty use them twice a year. Seven students said they hope to use them more frequently, particularly during bad weather. A number of other witnesses—all of them only occasional users—complained about the condition of the trains and the station at Vincennes, about a poor on-time record, crowded and dirty equipment. All of the above witnesses urge continuation of the service with improvement of quality.

At Terre Haute, the mayor pressed the view that passenger train service is needed in the development of industry and commerce. On his six trips to Chicago in the past year he used train service once when his air flight was grounded on account of bad weather. The chamber of commerce cited statistics showing growth in population, commerce, enrollment in the universities and retail sales as yardsticks of a demand for improved service. Aware that loss of mail revenues has precipitated discontinuance of passenger rail service, it argued that the railroad should consider providing complete service, freight and passenger, and should look to the passenger market as any other business man looks at a new market. Further, that a successful company expects to absorb departmental losses within its gross earnings in order to provide a complete service. Professors and students of a local university, opposing the discontinuance, testified to their use of the trains variously from regular weekend use to once or twice a year during inclement weather. Student ownership of automobiles by upper classmen is permitted and some of the students use the trains only when they cannot

obtain automobile transportation. Student use of the trains is primarily on holidays and at the beginning and end of summer vacation. While enrollment at the local university has more than doubled in the past 6 or 7 years, use of the trains at Terre Haute has continued to decline.

A religious order with national headquarters at nearby St. Mary of the Woods has 350 members who ride the trains to Chicago twice annually for connections east and west thereof. The order has a number of automobiles at its disposal and has used them and bus service for Chicago trips. In advertising for its college the order would like to be in a position to advise prospective students that easy access is available via rail among other modes. It has had some difficulty with on-time performance of the trains, particularly in making connections. The college has about 400 students, a number of whom are from the Chicago area.

Some evidence was presented to show the carrier's car-cleaning program and the problems involved. Sometimes delay in arrival at Chicago requires quick turnaround, and cleaning of the cars leaves much to be desired. The record indicates that C&EI has made some effort to overcome the problem but must deal with C&WI which maintains the Chicago terminal facility.

Discussion and conclusions.—Numerous factors are considered in determining whether to order the continuance of service under section 13a(1) of the act. Among them are public use of the service, population of the area, effect of a train discontinuance upon the communities served, available alternate transportation, financial results of the operation, prospects for the future, and the carrier's financial condition. The weight to be given each factor depends on the circumstances in a particular case. No one factor is necessarily controlling. The intent of Congress in enacting section 13a was to enable carriers to discontinue train services that no longer pay their way, and for which

there is no longer sufficient public need to justify the financial loss involved. See *Southern Ry. Co.* v. *North Carolina*, 376 U.S. 93.

At one time the passenger train was the pride of the transportation system. This was especially so in the United States where there was vast wilderness to be tamed, rich deposits of natural resources to be tapped, and large, widely-separated cities to be connected. The railroad and its passenger trains provided the strands for tying the far-flung areas together, and the channels for rapid, efficient communication and transport. Time and inventive genius created more efficient means for performing a number of the functions for which we formerly relied on the rails. Electronics provide instant communication, and airplanes cut transport time tremendously for people, mail and express. The automobile and the supper highway—for which the American people have a special fascination—provide particular convenience which other modes cannot duplicate.

The evidence now before us shows that the subject trains no longer are used by express shippers (except for some movements between Chicago and Chattanooga), or by the Post Office Department for mail (once a highly remunerative source of traffic and a primary source of sustenance for passenger trains). Passenger traffic has been dwindling. In the meantime, costs continue upward inexorably. The general rise in costs throughout the economy are reflected in the railroad's expenses for employees, equipment, fuel, supplies, facilities and services. With the loss of mail revenues making a dramatice change in the financial results of the operation, C&EI would have to absorb an out-of-pocket deficit well over $400,000 per year in order to continue trains Nos. 93 and 54. It is likely that the deficit would go beyond a half million dollars.

Financially, this carrier is at best marginal. It has a history of deficit operation and is beset with numerous

problems flowing therefrom regarding rehabilitation of its line and recovery of traffic. See *Missouri Pac. R. Co. —Control—Chicago & E. I. R. Co.*, 327 I.C.C. 279 (1965). The slender profit shown on this record for 1965 and 1966 occurred at the height of a record breaking period of national prosperity. The relatively slight slowdown in the national economy during 1967 had an immediate and telling effect on C&EI's operation, creating a net deficit of nearly $2 million in the first 7 months of the year. C&EI is an important link in the national rail system and from the point of service in its own area and as an integral part of the national system, its viability is a thing much to be desired. Continuance of the subject trains would militate against that objective. There is no reasonable prospect for relief from the financial burdens imposed by those trains. To the contrary, all indications are that the burdens would mount. And this, in turn, would soon intensify the railroad's malaise, all to the detriment of the public.

The people who have been using the trains for travel have done so largely on an occasional or standby basis. Their primary means of conveyance are the automobile and other nonrail modes. The testimony of the governmental leaders, business representatives, students and housewives is clear proof of that. The witnesses themselves appear to prefer air and automobile travel. Many gave opinions about a need for rail passenger service in the interest of community and commercial growth, but few hard, realistic facts were advanced by them in support. The passenger-use statistics stand as stark proof that, regardless of what is felt and said, the people along the C&EI's Evansville-Chicago line are not using the trains. Their patronage is minimal.

For those who must depend upon public transportation, bus service is far more plentiful than the train service—at all points on the line. Use of the buses will require

an adjustment, but whatever inconvenience might be experienced does not outweigh, on the scale of the public interest, the tremendous burden continued operation of the trains would involve. We conclude that discontinuance by C&EI of trains Nos. 93 and 54 is consistent with the purpose of section 13a(1) of the act, and the objectives of the national transportation policy.

Certain railway employees seek imposition of the *Burlington* or similar conditions in the event the discontinuance is authorized. Similar requests have been considered in prior proceedings of this nature, and the Commission has uniformly held that we do not possess authority to impose conditions for the protection of railway employees who may be adversely affected as a result of the discontinuance of passenger service under section 13a(1). See *Great Northern Ry. Co. Discontinuance of Service*, 307 I.C.C. 59. However, the probable effect of such discontinuance on employees is a matter to be considered in determining whether the public convenience and necessity require the continuance of such service. We have considered that factor, and, in our opinion, the probable adverse effect upon employees does not afford sufficient grounds to order continuance of the service.

Contentions of the parties as to fact or law not specifically discussed herein have nevertheless been considered and found to be without merit or material significance.

We find that the operation by the Chicago & Eastern Illinois Railroad Company of passenger trains Nos. 93 and 54 between Chicago, Ill., and Evansville, Ind., is not required by the public convenience and necessity and that continued operation thereof would unduly burden interstate or foreign commerce.

An appropriate order will be entered discontinuing the investigation herein.

APPENDIX A

Statement of revenues and expenses for trains Nos. 93 and 94 in 1965, 1966 and 6 months of 1967

	1965		1966		Six Months 1967	
	Train No. 93	Train No. 94	Train No. 93	Train No. 94	Train No. 93	Train No. 94
Revenues:						
102 Coach (1)	$ 516,762	$ 480,139	$ 532,953	$ 468,549	$ 235,039	$ 197,355
103 First class (1)	90,032	122,097	87,680	115,593	33,431	45,172
103-106 Baggage & other (1)	1,606	493	2,270	1,153	2,970	1,315
106 Mail-RPO (1)	81,043	62,304	82,843	82,843	12,483	12,483
106 Mail-storage (1)	305,137	50,854	305,621	94,111	110,356	37,510
107 Express (1)	4,311	906	2,955	4,762	7,258	4,436
131 Dining & buffet (1)	45,874	45,875	47,844	47,844	18,910	18,910
Total Revenue	1,044,765	762,668	1,062,166	814,855	420,447	317,181
305-538 Car hire, net (1)	51,042	48,488	21,328	2,008	(280)	(5,900)
Total Income (2)	1,095,807	811,156	1,083,595	816,863	420,167	311,281
Total Expense (See below)	1,001,950	862,270	1,125,287	1,022,127	527,421	477,387
PROFIT OR (LOSS)	93,857	(51,114)	(41,793)	(205,264)	(107,254)	(166,106)
Maintenance of Equipment:						
311 Repairs, diesel locomotives (3)	54,497	54,897	70,299	70,959	26,703	26,695
317 Passenger-train cars-Repair (4)	89,300	72,511	174,853	143,022	75,937	70,864
331 Equip.Depre.(52)Loco.(5)	12,996	12,996	12,996	12,996	6,498	6,498
331 Equip.Depre.(54)Pass.Cars(6)	56,051	55,739	59,211	58,431	28,498	27,882
335 Emp. H&H benefits (7)	2,334	2,173	2,916	2,841	1,799	1,750
Traffic:						
351-360 Passenger Traffic (8)	17,896	13,539	19,959	14,916	10,998	8,018
Transportation:						
373 Station employees (9)	67,445	26,784	64,723	29,376	24,154	11,641
376 Sta. supplies & exp. (10)	2,568	1,568	2,568	1,568	1,531	1,384
378 Yard Cond. & Brkmn. (11)	3,436	3,436	1,661	1,691	1,832	1,832
392 Train enginemen (1)	48,669	51,395	47,803	50,368	23,674	24,517
394 Train Fuel (3)	58,187	58,614	44,150	44,583	18,607	18,401
397 Water for train Loco. (3)	1,506	1,517	2,486	2,510	1,078	1,078
398 Lubs. for train Loco. (3)	2,746	2,766	3,127	3,156	2,345	2,345
399 Other supplies for train loco. (3)	648	654	377	380	101	101
400 Engine. expense train (3)	14,820	14,929	12,395	12,511	4,909	4,908
401 Trainmen (1)	61,163	61,881	64,651	63,937	29,278	29,201
402 Train supplies & exp. (12)	64,778	57,268	99,105	84,673	47,025	44,627
403 Operating sleeping cars (1)	46,199	49,385	41,171	51,581	24,530	18,696
409 Emps. H&H benefits (13) insurance (1)	7,727	6,134	6,394	5,508	2,459	2,468
415 Clearing wrecks (1)	12,172	12,172	12,178	12,178	8,786	8,786
419 Loss & damage-baggage (1)	---	---	4,987	---	---	---
430 Injuries to persons (1)	230	20	492	492	484	484
441 Dining & buffet serv. (1)	78,350	2,375	22,782	2,393	11,000	1,647
	69,161	69,161	76,839	76,839	35,594	35,594
General:						
452 Clerks, accounting (14)	13,566	13,444	10,972	10,292	4,571	4,179
456 Emps. H&H benefits (15)	580	576	429	404	180	162
All Joint Facility Accounts (16)	212,554	215,158	244,132	236,092	119,498	113,697
532 Ry. tax accruals (17)	24,350	20,196	29,431	25,381	10,992	10,422
TOTAL EXPENSES:	1,001,950	862,270	1,125,287	1,022,127	527,421	477,387

NOTES:

(1) Actual.
(2) Revenue plus car hire.
(3) Passenger portion of account divided by passenger unit-miles times unit-miles per train.
(4) Passenger portion of account divided by passenger car-miles exclusive of sleeping car-miles times actual car-miles per train.
(5) At I.C.C. rates distributed to trains on basis of units assigned.
(6) At I.C.C. rates distributed to trains on basis of actual car-miles.
(7) G.M.A. rates applied to labor portion of accounts Nos. 311 and 317.
(8) Distributed on basis of revenue pro rata.
(9) Includes mail handlers, also C&EI station employees.
(10) Trains Nos. 93 and 94's portion of Danville depot expense.
(11) Evansville border - actual.
(12) Passenger portion of account divided by passenger car-miles including sleeping car-miles.
(13) G.M.A. rates applied to labor portion of accounts Nos. 373, 378, 392 and 401.
(14) Revenue pro rata of actual wages.
(15) G.M.A. rates applied to labor portion of account No. 452.
(16) Savable portion of joint facility expense at Chicago, Terre Haute, Vincennes and Evansville.
(17) R.R. and U.I. rates (G.M.A.) applied to labor portion of accounts Nos. 311, 317, 331 through 360, 373, 378, 392, 401 and 452.

Order

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 25th day of January 1968.

Finance Docket No. 24725

Chicago & Eastern Illinois Railroad Co.—Discontinuance of Trains Nos. 93 and 54 Between Chicago, Ill. and Evansville, Ind.

Investigation of the matters and things involved in this proceeding having been made pursuant to the order of said division, dated September 18, 1967, a hearing having been held and the said division on the date hereof having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That this investigation be, and it is hereby discontinued, and that this order shall be effective 35 days from the date hereof.

By the Commission, division 3.

H. Neil Garson,
Secretary.

(Seal)

APPENDIX D

Service Date
May 15, 1968

Order

At a Session of the Interstate Commerce Commission, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 8th day of May, 1968.

Finance Docket No. 24725

Chicago & Eastern Illinois Railroad Co.—Discontinuance of Trains Nos. 93 and 54 Between Chicago, Ill. and Evansville, Ind.

Upon consideration of the record in the above-titled proceedings, including the petition filed by the Cities of Chicago, Danville, Hoopeston, Terre Haute, Vincennes, and Watseka and the Village of Milford, on March 1, 1968, for reconsideration of the order of the Commission, Division 3, dated January 25, 1968, authorizing the above-titled discontinuance; applicant's reply thereto; petitioners' motion to strike certain matter appearing in the reply; and applicant's reply to the motion; and

It appearing, That the matters appearing in the reply to the petition objected to in the motion to strike are not of record in this proceeding and therefore not properly before this Commission as evidence and that no objection is made to the motion to strike;

It further appearing, That in order to invoke the jurisdiction of this Commission under section 13a(1) of the Interstate Commerce Act a carrier must comply with certain requirements, including the posting of notice "in each station, depot, or other facility involved" (49 CFR 43.5 (j)), which notice must contain a "complete description of the present service of the train . . . involved and of the discontinuance or change of operation or service pro-

posed" (49 CFR 43.5(c)); and that the purpose of requiring such notice is to give the travelling public affected the opportunity to protest the proposed discontinuance; and

It further appearing, That applicant in the above-titled proceeding failed to give the proper notice required, as described above, in that no notice was posted in those facilities along the through route of trains Nos. 93 and 54 south of Evansville, Ind., and the notice as posted contained no mention of the through-route nature of the trains south of Evansville; and that applicant therefore has not effectively invoked the jurisdiction of this Commission in the above-titled proceeding:

It is ordered, That the motion to strike certain matters appearing in applicant's reply to the petition for reconsideration be, and it is hereby, granted;

It is further ordered, That the petition, insofar as it seeks dismissal of the above-entitled proceeding for failure to invoke this Commission's jurisdiction under section 13a(1), be, and it is hereby, granted, and in all other respects is denied.

By the Commission, Division 3, acting as an Appellate Division.

H. NEIL GARSON,
Secretary.

(SEAL)

APPENDIX E

Service Date
May 15, 1968

Corrected Order

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 3, acting as an Appellate Division, held at its office in Washington, D. C., on the 8th day of May, 1968.

Finance Docket No. 24725

CHICAGO & EASTERN ILLINOIS RAILROAD CO.—DISCONTINUANCE OF TRAINS NOS. 93 AND BETWEEN CHICAGO, ILL. AND EVANSVILLE, IND.

Upon consideration of the record in the above-titled proceedings, including the petition filed by the Cities of Chicago, Danville, Hoopeston, Terre Haute, Vincennes, and Watseka and the Village of Milford, on March 1, 1968, for reconsideration of the order of the Commission, Division 3, dated January 25, 1968, authorizing the above-titled discontinuance; applicant's reply thereto; petitioners' motion to strike certain matter appearing in the reply; and applicant's reply to the motion; and

It appearing, That the order of the Commission, Division 3, acting as an Appellate Division, dated May 8, 1968, and served earlier on May 15, 1968, erroneously indicated that the Commission had granted the petition insofar as it sought dismissal of the above-titled proceeding for failure to properly invoke this Commission's jurisdiction under section 13a(1);

It further appearing, That the matters appearing in the reply to the petition objected to in the motion to strike are not of record in this proceeding and therefore not properly before this Commission as evidence and that no objection is made to the motion to strike;

It further appearing, That in order to invoke the jurisdiction of this Commission under section 13a(1) of the Interstate Commerce Act a carrier must comply with certain requirements, including the posting of notice "in each station, depot, or other facility involved" (49 CFR 43.5 (j)), which notice must contain a "complete description of the present service of the train . . . involved and of the discontinuance or change of operation or service proposed" (49 CFR 43.5(c)); and that the purpose of requiring such notice is to give the travelling public affected the opportunity to protest the proposed discontinuance;

It further appearing, That applicant in the above-titled proceeding gave the proper notice required, as described above; and

It further appearing, That no other new issues are raised or evidence of substance offered to support the request for reconsideration, and good cause has not been shown for granting the relief requested;

It is ordered, That the motion to strike certain matters appearing in applicant's reply to the petition for reconsideration be, and it is hereby, granted;

It is further ordered, That the petition for reconsideration be, and it is hereby, denied in all respects.

By the Commission, Division 3, acting as an Appellate Division.

H. NEIL GARSON,
Secretary.

(SEAL)